

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ANN ALTMAN,

Plaintiff/
Counterclaim-Defendant

V.

Case No.: 4:25-cv-00017-SEP

SAMUEL ALTMAN,

Defendant/
Counterclaim-Plaintiff

**DEFENDANT’S RESPONSE TO IMPROPER SUR-REPLY OPPOSING DEFENDANT’S
MOTION TO DISMISS OR STRIKE PLAINTIFF’S PRAYER FOR PUNITIVE
DAMAGES**

Plaintiff sought and obtained leave “to file a short sur-reply for the limited purpose of addressing” a single argument that she contended was raised for the first time on reply in support of Mr. Altman’s motion to dismiss or strike punitive damages. ECF No. 31 ¶¶ 4, 6. Plaintiff’s subsequently filed sur-reply exceeded this scope, introducing new arguments that are directly responsive to points Mr. Altman made in his opening memorandum and which Plaintiff could have made in her opposition. *See, e.g.*, ECF No. 33 at 2-3 (attempting to distinguish *Advanced Physical Therapy, LLC v. Apex Physical Therapy, LLC*, No. 6:20-CV-03043-RK, 2022 WL 303345 (W.D. Mo. Feb. 1, 2022)). Had Plaintiff timely raised these arguments in her opposition, Mr. Altman would have had the opportunity to respond and assist the Court in evaluating them. The Court should therefore not consider those portions of the sur-reply. *See, e.g.*, *Hogan Logistics, Inc. v. Davis Transfer Co., Inc.*, 2018 WL 341733, at *6 n.3 (E.D. Mo. Jan. 9, 2018) (declining to consider sur-reply contentions that “reopen[] argument on previously briefed issues” rather than “respond to any new argument raised by Davis in its reply”); *accord United States v. Boston Scientific Corp.*, 2021 WL 3604848, at *9 n.2 (D. Minn. Aug. 13, 2021). If the Court believes that a response from Mr. Altman would assist in evaluating his motion, Mr. Altman would be glad to provide a short responsive submission addressing the meritless arguments Plaintiff improperly raised in her sur-reply.

DATED: May 29, 2025

HEPLERBROOM LLC

By: /s/ Thomas J. Magee
Thomas J. Magee No. 32871
701 Market St., Suite 1400
St. Louis, MO 63101
314-241-6160
314-241-6116 Fax
tmagee@heplerbroom.com

Attorneys for Defendant

MUNGER, TOLLES & OLSON LLP

By: /s/ Jonathan I. Kravis
Jonathan I. Kavis (pro hac vice)
Xiaonan April Hu (pro hac vice)
601 Massachusetts Ave. NW, Suite 500E
Washington, D.C. 20001-5369
202-220-1100
202-220-2300 Fax

Hailyn J. Chen (pro hac vice)
Cordell A. Brown (pro hac vice)
350 South Grand Ave., 50th Floor
Los Angeles, CA 90071-3426
213-683-9100
213-687-3702 Fax

Dane P. Shikman (pro hac vice)
560 Mission St., 27th Floor
San Francisco, CA 94105
415-512-4000
415-512-4077 Fax

Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 29, 2025, the foregoing was filed electronically with the Clerk of Court, therefore to be served electronically by operation of the Court's electronic filing system upon all counsel of record.

/s/ Dane P. Shikman